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December 2, 2022

Via Email and ECF

Hon. Paul A. Engelmayer
United States District Judge
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

In re Morgan Stanley Data Security Litigation, 1:20-cv-5914 (PAE)

Dear Judge Engelmayer:

As directed by this Court's November 22, 2022 order (ECF No. 195), we write on behalf of Defendant Morgan Stanley Smith Barney ("Morgan Stanley") in response to Ms. Linden's Letter Motion for Sanctions (ECF No. 194). For the reasons set forth below, we respectfully submit that Ms. Linden's request for sanctions should be denied.

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Ms. Linden's application lacks any basis in fact or law. In her letter motion, Ms. Linden seeks monetary sanctions and a written apology pursuant to Fed. R. Civ. P. 11 from the undersigned and the Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss") law firm arising out of a November 11, 2022 email in which I informed Ms. Linden that "We do not represent Morgan Stanley (or any other entity) in connection with the issues you have raised concerning any accounts you or your family members may have had or had at Morgan Stanley. We also do not represent you. Accordingly, we will not respond to any further correspondence you send to our firm." (ECF No. 194, Ex. A.) Ms. Linden alleges that this representation is "inconsistent with the facts," based on my (and Paul, Weiss's) appearance as counsel of record for Morgan Stanley in connection with the class action styled as *In re Morgan Stanley Data Security Litigation*, 1:20-cv-5914 (PAE) (S.D.N.Y.) (the "Class Action"), and that therefore Rule 11 sanctions should be imposed. (See ECF No. 194 & Exs. B, C, D.).

As an initial matter, Ms. Linden's reference to Rule 11 is inapposite, because the communication in question is not a court filing. More importantly, Paul, Weiss's November 11 email to Ms. Linden was completely accurate and appropriate in all respects. Following the Court's August 5, 2022 approval of the settlement of the Class Action, Ms. Linden began communicating directly with Paul, Weiss concerning alleged issues related to accounts her deceased father previously held at Morgan Stanley. We received over a dozen communications directly from Ms. Linden between August 8 and November 18, 2022.¹ In her communications, Ms. Linden demanded that Morgan Stanley (and other

¹ These communications, which are attached as Exhibit 1 to the accompanying declaration of Susanna Buergel dated December 2, 2022, were directed to several lawyers

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entities not involved in the Class Action, including Charles Schwab) provide her with documentation and other information related to her deceased father's former accounts. Ms. Linden also raised issues related to a matter apparently arising from the Connecticut Court of Probate. *See Ex. 2.*

On August 11, 2022, my partner Jane O'Brien responded to one such communication from Ms. Linden, noting that “[n]ow that the Court has approved the settlement and entered a final judgment,” the Class Action is “closed.” Ms. O'Brien further stated that, to the extent Ms. Linden has “questions regarding any accounts [she] may have held at Morgan Stanley in the past, those questions should be directed to Morgan Stanley.” *See* Buergel Decl. Ex. 3. Ms. Linden, however, persisted in communicating with Paul, Weiss, including a communication on November 10, 2022, in which she demanded that Paul, Weiss assist her efforts to obtain “agent paperwork” related to her father’s accounts as well as “fiduciary paperwork.” The November 11, 2022 communication that is the subject of Ms. Linden’s sanctions motion was in direct response to this demand. *See* Buergel Decl. Ex. 4.

To our knowledge, Ms. Linden has not commenced any action or filed any claim against Morgan Stanley related to her father’s accounts. Nor has Paul, Weiss ever been retained at any time by Morgan Stanley to represent it in connection with Ms. Linden’s demands for paperwork and files concerning those accounts, or for any issues related to any matters pending in the Connecticut Court of Probate. While there is no dispute that Paul, Weiss represents Morgan Stanley in the Class Action, involving a settlement class of

at Paul, Weiss; we are not confident that we received every communication Ms. Linden intended to direct to our firm.

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which Ms. Linden is a member, Ms. Linden's repeated communications to Paul, Weiss do not concern that matter. Paul, Weiss's November 11 email was therefore accurate and appropriate in all respects.

Accordingly, Ms. Linden's Letter Motion for Sanctions should be denied with prejudice.

Respectfully submitted,

/s/ Susanna M. Buergel

Susanna M. Buergel
Jane B. O'Brien
Paul, Weiss, Rifkind,
Wharton & Garrison LLP

*Counsel for Defendant
Morgan Stanley Smith Barney LLC*

cc: All counsel of record